

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Chief Patrick Lynn (954) 693-8320

PREPARED BY: Adrienne Fletcher

SUBJECT: Ordinance

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, CREATING CHAPTER __, ARTICLE__. LODGING OUT-OF-DOORS, SECTION__ TO PROHIBIT USING PUBLIC OR PRIVATE PLACES OUT-OF-DOORS FOR LODGING PURPOSES; SETTING FORTH FINDINGS AS TO INTENT AND PURPOSE; PROVIDING FOR THE SEVERABILITY OF THE PARTS HEREOF; PROVIDING FOR READING BY TITLE ONLY; PROVIDING FOR AN EFFECTIVE DATE

REPORT IN BRIEF: The Town is establishing a new chapter and article of the Town Code entitled "Lodging Out-of-Doors;" to prohibit using public or private places out of doors for lodging purposes. This ordinance has been reviewed by the Assistant Town Attorney, Tom Moss.

PREVIOUS ACTIONS: At the November 5, 2008 meeting, Council approved the item on first reading.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s): Ordinance

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, FLORIDA
CREATING CHAPTER __, ARTICLE __. LODGING OUT-OF-
DOORS, SECTION __ TO PROHIBIT USING PUBLIC OR PRIVATE
PLACES OUT-OF-DOORS FOR LODGING PURPOSES; SETTING
FORTH FINDINGS AS TO INTENT AND PURPOSE; PROVIDING
FOR THE SEVERABILITY OF THE PARTS HEREOF; PROVIDING
FOR READING BY TITLE ONLY; PROVIDING FOR AN EFFECTIVE
DATE.

WHEREAS, the Chief of Police has recommended to the Town Council that the
Davie Town Code be amended to create a new Article __, Section ____, as more
particularly set forth herein, to prohibit using public or private places out-of-doors for
lodging purposes; and

WHEREAS, the Chief of Police has advised the Town Council that he and his
officers have confirmed through routine patrol and investigation that the use of public or
private places for lodging purposes, by persons without the permission of the property
owner, whether on public or private property promotes unsanitary conditions, including
but not limited to litter, junk, rubbish, debris, excrement and other matter which has an
adverse impact upon public health; and

WHEREAS, the Chief of Police has recommended that the Town Code be
amended to create a new Article __ to prohibit lodging out-of-doors, as more particularly
set forth herein, because of the threat to the public health, safety and welfare; and

WHEREAS, the Town Council has been advised that there are public shelters
within Broward County which are available to assist and house homeless persons; and

WHEREAS, the Town Council finds it is reasonable to afford a person who
qualifies for the services of a public shelter, a one-time opportunity to be transported to

such a shelter before being charged with a violation of the offense of lodging out-of-doors; and

WHEREAS, the Town Council finds that the amendments to the Town Code, as more particularly set forth herein serve to promote the sanitation, health, safety, and welfare of the Town and thus serve a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council hereby adopts and incorporates by reference herein all of the findings set forth above as findings of the Town Council.

SECTION 2. The Town Code of the Town of Davie, Chapter _____, [Title] Article ____ Lodging Out-of-Doors, is created to read as follows:

“CHAPTER ____
ARTICLE _____. LODGING OUT-OF-DOORS

Sec. _____ Lodging out-of-doors prohibited.

- (a) It shall be unlawful for any person to use any public or private property in the Town out-of-doors for lodging except with the permission and consent of the Town Administrator or the property owner.
- (b) For purposes of this section, lodging out-of-doors shall have occurred when it reasonably appears, in light of all of the circumstances, that private or public property is being used for living accommodation purposes. The following activities which shall be considered in making this determination shall include, but shall not necessarily be limited to the following:
 - (1) Erecting, using or being in any tent, hut, lean-to, shack or temporary shelter for sleeping or cooking activities.
 - (2) The laying down of bedding, such as a blanket or sleeping bag or similar material for the purpose of sleeping.
 - (3) Sleeping on private or public property.
 - (4) The nature and extent to which personal belongings are present.
 - (5) Carrying on any cooking activities.
 - (6) Making a fire.
 - (7) Doing any digging or earth breaking activities.
 - (8) Urinating or defecating on private or public property.

- (9) The length of time of the person has been at the same location.
 - (10) Statements made by the person using the public or private property regarding his or her intent.
 - (11) Statements of any other person or persons relating to their observations of the use of the public or private property.
- (c) Except as provided for in subsection (d), whenever a law enforcement officer has probable cause to believe that a violation of this section has occurred, he or she shall advise the person of the violation and afford a first-time offender of this section an opportunity to be transported by a law enforcement officer to a public shelter. The law enforcement officer shall advise the person that all of his or her personal property which is not taken to the public shelter, except that which is of no apparent utility or which is in an unsanitary or unsafe condition, shall be inventoried and stored by the Davie Police Department for a maximum of sixty (60) days, until reclaimed. If the person elects to be transported to a public shelter, the law enforcement officer shall make available such transportation as may be available for such purpose and the person making such election shall not be charged with a violation of this section. If the person refuses to be transported to a public shelter, then such person may be charged with a violation of this section.
- (d) The election to be transported to a public shelter set forth in subsection (c) shall not apply to any person who can not be properly identified, or who does not qualify for the services of the public shelter due to drug or alcohol intoxication, or any other reason, or who within the past year was previously charged with a violation of this section or who elected to be transported to a public shelter in lieu of being charged with a violation of this section. For purposes of this subsection, proper identification shall include, but not be limited to, a driver's license, a government or employment identification card with photograph, or other form of identification which would satisfy a law enforcement officer as to the identity of the person.
- (e) Any personal property that was inventoried and stored by the Police Department for a person transported to a shelter under the provisions of this section which has not been reclaimed within sixty (60) days of the date the personal property was inventoried and stored shall be deemed abandoned and disposed of according to Chapter 705, Florida Statutes."

SECTION 3. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of

competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2008

PASSED ON SECOND READING THIS ____ DAY OF _____, 2008

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008